

AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL**

**No. 696**

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**Introduced by Senator Scott**

February 21, 2003

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An act to amend Section 44942 of, and to add Section 44440 to, the Education Code, relating to teacher credentialing.

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Scott. Teacher credentialing: suspension of credential.

Existing law authorizes the governing board of a school district to suspend or transfer to other duties a certificated employee if the board has reasonable cause to believe that the employee is suffering from mental illness to a degree that renders him or her incompetent to perform his or her duties and under specified conditions requires the board to offer the employee the opportunity of being examined by a panel of psychiatrists or psychologists. If a majority of the panel find that the employee is suffering from mental illness to a degree that renders him or her incompetent to perform his or her duties, the governing board is authorized to place the employee on mandatory sick leave of absence.

This bill would require the governing board, if the board exercises the above-referenced authority, to notify the Commission on Teacher Credentialing of the action placing the employee on mandatory sick leave *and provide the commission with a copy of the panel's written report* not later than 10 days after that action. The bill would ~~require the commission~~ *authorize the Committee of Credentials* to suspend the credential of the employee placed on mandatory sick leave *if the committee determines the credential holder suffers from a mental illness*

that renders him or her unable to perform the duties authorized by the credential. The bill would require the commission to adopt regulations governing the suspension *and restoration* of a credential held by a person who is deemed by a psychiatrist or psychologist to be unable to perform duties authorized by the credential due to mental illness or condition.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 44440 is added to the Education Code,  
2 to read:

3 44440. (a) Upon receipt of notification from the governing  
4 board of a school district that the holder of a credential was placed  
5 on mandatory sick leave pursuant to subdivision (f) of Section  
6 ~~44942, the commission shall immediately suspend the credential~~  
7 ~~of that holder.~~ *44942, the Committee of Credentials may, upon*  
8 *review of the panel's report of the psychiatric or psychological*  
9 *evaluation pursuant to Section 44942, determine if the credential*  
10 *holder suffers from a mental illness to a degree that renders him*  
11 *or her unable to perform the duties authorized by the credential.*  
12 *If the committee finds that the holder is suffering from a mental*  
13 *illness that renders him or her unable to perform the duties*  
14 *authorized by the credential, the committee may suspend the*  
15 *credential. The fact that a credential holder has sought or received*  
16 *psychiatric treatment may not be considered as evidence of a*  
17 *mental disability and may not be the basis for a review to be*  
18 *initiated by the Committee of Credentials to determine if his or her*  
19 *credential should be suspended for mental disability.*

20 (1) A suspension imposed pursuant to this section applies to all  
21 certification documents held by the person placed on mandatory  
22 sick leave pursuant to subdivision (f) of Section 44942.

23 (2) A suspension imposed pursuant to this section remains in  
24 force until the ~~commission determines~~ *Committee of Credentials*  
25 *determines, based on an evaluation by a licensed psychiatrist or*  
26 *psychologist, that the holder of the credential no longer suffers*  
27 *from a mental illness to a degree that renders him or her unable to*  
28 *perform the duties authorized by the suspended credential, a*  
29 *superior court finds that the employee should not have been placed*

1 *on mandatory sick leave pursuant to subdivision (f) of Section*  
2 *44942, or the governing board reinstates the employee to the same*  
3 *or a substantially similar position pursuant to subdivision (i) of*  
4 *Section 44942.*

5 (3) A suspension imposed pursuant to this section is not an  
6 adverse action as defined in Section 44000.5 and may not be  
7 reported or disclosed when the period of disability is terminated.

8 (4) This section does not prohibit the commission from taking  
9 an adverse action against the holder of a credential suspended  
10 pursuant to this section.

11 (b) The commission shall adopt regulations governing the  
12 suspension *and restoration* of a credential held by a person who is  
13 deemed by a psychiatrist or psychologist to be unable to perform  
14 duties authorized by the credential due to mental illness or  
15 condition.

16 SEC. 2. Section 44942 of the Education Code is amended to  
17 read:

18 44942. (a) A certificated employee may be suspended or  
19 transferred to other duties by the governing board if the board has  
20 reasonable cause to believe that the employee is suffering from  
21 mental illness to a degree that renders him or her incompetent to  
22 perform his or her duties.

23 (b) The governing board shall immediately, upon any  
24 suspension or transfer under this section, give to the employee a  
25 written statement of the facts giving rise to the board's belief and  
26 an opportunity to appear before the board within 10 days to explain  
27 or refute the charges.

28 (c) If, after the employee's appearance before the board, the  
29 board decides to continue the suspension or transfer, or if the  
30 employee chooses not to appear before the board, the employee  
31 shall then be offered, in writing, the opportunity of being  
32 examined by a panel consisting of three persons who are either  
33 psychiatrists or psychologists, at least one of whom shall be a  
34 psychiatrist, selected by him or her from a list of psychiatrists and  
35 psychologists to be provided by the board. To assist the panel in  
36 making its determination, the governing board shall supply to the  
37 panel, before the date scheduled for the examination, a list of the  
38 duties of the position from which the employee was suspended or  
39 transferred. The employee shall continue to receive his or her  
40 regular salary and all other benefits of employment during the

1 period dating from his or her suspension to the filing of the report  
2 of the panel with the governing board.

3 (d) The examination shall be conducted at school district  
4 expense within 15 days of any suspension or transfer ordered  
5 under this section. The employee shall submit to the examination,  
6 but shall be entitled to be represented by a psychiatrist,  
7 psychologist licensed under Chapter 6.6 (commencing with  
8 Section 2900) of Division 2 of the Business and Professions Code,  
9 or physician of his or her own choice, and any report of the  
10 psychiatrist, psychologist, or physician selected by him or her shall  
11 be filed with the panel at the request of the employee.

12 A written report of the panel on the examination of the  
13 suspended or transferred employee shall be submitted to the  
14 governing board no later than 10 days after completion of the  
15 examination. A copy shall be supplied to the employee upon  
16 request. The report shall contain a finding on whether the  
17 employee is suffering from mental illness to a degree that renders  
18 him or her incompetent to perform his or her duties.

19 (e) If a majority of the panel conclude that the employee should  
20 be permitted to return to his or her duties, no written record of the  
21 suspension or of the determination of the panel shall be retained,  
22 and in all respects any written record concerning the employee  
23 shall appear as it did before the suspension was made.

24 (f) (1) If a majority of the panel find in the panel's report that  
25 the employee is suffering from mental illness to a degree that  
26 renders him or her incompetent to perform his or her duties, the  
27 governing board may, upon receipt of the report, place the  
28 employee on mandatory sick leave of absence. Any mandatory  
29 sick leave of absence imposed under this section may not exceed  
30 two years, during which period the employee shall be entitled to  
31 sick leave and hospital and medical benefits that he or she accrued  
32 during his or her employment by the governing board but only to  
33 the extent of that accrual.

34 (2) Not later than 10 days after placing an employee on  
35 mandatory sick leave of absence, the governing board shall notify  
36 the Commission on Teacher Credentialing of that action *and*  
37 *provide the commission with a copy of the written report of the*  
38 *panel submitted to the governing board pursuant to subdivision (d)*  
39 *if the employee submitted to an evaluation pursuant to that*  
40 *subdivision.* Upon receipt of the notice the Commission on

1 Teacher Credentialing ~~shall~~ *may* suspend the credential held by the  
2 employee pursuant to Section 44440 *if the committee finds that the*  
3 *holder is suffering from a mental illness that renders him or her*  
4 *unable to perform the duties authorized by the credential. The fact*  
5 *that a credential holder has sought or received psychiatric*  
6 *treatment may not be considered as evidence of a mental disability*  
7 *and may not be the basis for a review to be initiated by the*  
8 *Committee of Credentials to determine if his or her credential*  
9 *should be suspended for mental disability.*

10 (g) ~~✶~~ An employee placed on mandatory sick leave of absence  
11 pursuant to this section may, in writing, immediately demand a  
12 hearing. Upon receipt of that written demand, the governing board  
13 shall file a complaint in the superior court of the county in which  
14 the school district, or the major part thereof, is located, setting  
15 forth the charges against the employee and asking that the court  
16 inquire into the charges and determine whether or not the charges  
17 are true, and, if true, whether they constitute sufficient grounds for  
18 placing the employee on mandatory sick leave of absence, and for  
19 a judgment pursuant to its findings.

20 (h) If the court finds that the employee was not, at the time of  
21 the suspension, incompetent to perform his or her assigned duties  
22 and should not have been placed on mandatory sick leave of  
23 absence, the employee shall be immediately reinstated to the same  
24 or a substantially similar position with full back salary, and any  
25 written record of the suspension or transfer or any report of the  
26 panel shall be destroyed.

27 (i) If the court confirms the placing of the employee on  
28 mandatory sick leave, or if the employee does not seek a hearing,  
29 then, upon written request of the employee made not earlier than  
30 six months nor later than two years after the date he or she was  
31 placed on mandatory sick leave of absence, a new panel consisting  
32 of three persons who are either psychiatrists or psychologists, at  
33 least one of whom shall be a psychiatrist, shall be convened by, and  
34 at the expense of, the governing board to review its original  
35 conclusion. If the original conclusion is not changed by the new  
36 panel as a result of that review, the employee shall be continued on  
37 the mandatory sick leave of absence, except that when the  
38 employee's total period of absence exceeds two years, the  
39 governing board shall either rescind its action and reinstate the  
40 employee to the same or a substantially similar position, or shall

1 serve the employee with a notice of intention to dismiss him or her,  
2 and proceed according to Section 44943.

3 (j) If a majority of the new panel concludes in its report, or any  
4 subsequent review thereof, that the suspended employee or  
5 employee on mandatory sick leave of absence should be permitted  
6 to return to his or her duties, or if the court so concludes, the  
7 governing board shall take immediate action to restore the  
8 employee to the position from which he or she was suspended or  
9 transferred or to a substantially similar position.

10 (k) Every hearing and action by or before the governing board  
11 pursuant to this section shall be in executive session, and no  
12 decision, action, or occurrence therein shall be made public, unless  
13 the employee so requests in writing.

14 (l) This section does not supersede Section 44949.

